

digit NDC codes) that are listed on the Preferred Drug List and distributed (directly or through the wholesale channel) to retail Pharmacies at which they are dispensed to Medicaid Recipients. Manufacturer agrees that it will not sell Products for re-packaging or relabeling by a third party for the purpose of influencing the Best Price or National Rebate for any Product. If Manufacturer elects to discontinue production, marketing or distribution of any Product or to transfer or license any Product to a third party, Manufacturer shall make every reasonable effort to notify AHCA prior to such action so that AHCA can negotiate with such third party for State Supplemental Rebates on such Product or remove such Product from the Preferred Drug List.

3.3. Assignments and Subcontracting. Manufacturer agrees to neither assign the responsibility of this Agreement to another party nor subcontract for any of the work contemplated under this Agreement without prior written approval of AHCA; provided, however, that Manufacturer may assign this Agreement to any of its affiliates, subsidiaries or its parent. No such approval by AHCA of any assignment or subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of AHCA in addition to the obligations agreed upon in this Agreement. All such assignments or subcontracts shall be subject to the conditions of this Agreement and to any conditions of approval that AHCA shall deem necessary.

3.4. Civil Rights. Manufacturer agrees to comply with:

- a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin;
- b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.
- c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex;
- d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age;
- e. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs;
- f. The Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.

Manufacturer agrees that compliance with this assurance constitutes a condition of AHCA's continued performance under the Agreement, and

that it is binding upon Manufacturer, its successors, transferees, and assignees for the period during which State Supplemental Rebates are provided. Manufacturer further assures that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of the above statutes, regulations, guidelines, and standards.

- 3.5. Employment. Manufacturer agrees to comply with section 274A (e) of the Immigration and Nationalization Act. AHCA shall consider the employment by any contractor of unauthorized aliens a violation of this Act. Such violation shall be cause for unilateral cancellation of this Agreement.

4.0 Term and Termination.

This Agreement shall be effective on (DATE) and shall continue in force until (DATE).

- 4.1. Bankruptcy and Insolvency. AHCA shall have the right to cancel this Agreement immediately and without prior notice in the event Manufacturer is adjudicated bankrupt, makes an assignment for the benefit of creditors without AHCA's prior written consent (which shall not be unreasonably withheld) or if a receiver is appointed for Manufacturer.
- 4.2. Termination for Breach. In the event one party determines that the other has violated or failed to comply with any of the requirements of this Agreement, the non-breaching party shall give the breaching party written notice of such breach. The breaching party shall have thirty (30) days from the receipt of notice in which to cure the breach to the satisfaction of the other party. Failure to cure shall give the non-breaching party the right to cancel this Agreement immediately. The non-breaching party shall give the breaching party written notice of the cancellation.
- 4.3. Termination Without Cause. Either party may terminate this Agreement by providing the other with 60 days prior written notice of its intention to terminate.
- 4.4. Effect on Accrued Obligations. Termination of this Agreement shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.
- 4.5. Remedies. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from seeking any other remedy it may be entitled to in law or equity, nor shall any provision under this Agreement which provides a remedy to a party for the

other party's non-performance be deemed to be a sole and exclusive remedy, unless specifically stated as such.

5.0 General Provisions

- 5.1. Relationship of Parties. The parties hereto are independent contractors engaged in the operation of their own respective enterprises. Nothing herein shall be deemed or construed to create any other relationship between the parties.
- 5.2. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for category two for a period of 36 months from the date of being placed on the convicted vendor list.
- 5.3. Record Keeping and Audit. During the term of this Agreement and for a period of three years thereafter, both parties to this Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. Manufacturer and AHCA shall have the right, at their own expense and upon reasonable notice to the other and in compliance with the other party's reasonable policies and procedures, to inspect and copy such records.
- 5.4. Best Price Contingency. Performance under this Agreement shall be contingent on Manufacturer's Best Price and AMP not being affected by State Supplemental Rebates. AHCA represents and warrants that the State Supplemental Rebates described in this Agreement have been approved by CMS to be exempt from Best Price and AMP.
- 5.5. Venue. Venue for any dispute or disagreement arising under this Agreement that is not resolved mutually by the parties shall be in Leon County, Florida.
- 5.6. Confidentiality. Subject to state and federal law, the parties to this Agreement agree to maintain the confidentiality of this Agreement and not to disclose its terms and conditions to third parties without the written consent of the other party, except that AHCA may share the pricing information in this Agreement with Members of the P&T Committee and any agents, designees or consultants who participate in the development and maintenance of Preferred Drug List so long as each such individual is bound to the terms and conditions of this confidentiality provision.

The parties agree not to disclose any information deemed confidential under state or federal law, including but not limited to information revealing the identity of any Medicaid Recipient without the prior written consent of such patient.

5.7. Use of Names and Trademarks. Neither party shall use the name of the other in any type of promotional or advertising material without the express, written consent of the other party. Manufacturer agrees to not use the name of the State of Florida in connection with its involvement in the Florida Medicaid Program or the Florida Medicaid Program in any manner without the express, written consent of AHCA. AHCA may use the trade name of any Product to communicate the Product's inclusion in the Preferred Drug List to Florida Medicaid providers.

5.8. Notice. Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail, postage prepaid, addressed to the other party at the following address:

If to AHCA:

Agency for Health Care Administration
Attn: Chief, Medicaid Pharmacy Services
2727 Mahan Drive, Stop #38
Ft. Knox Bldg. 3, Rm. 1325-C
Tallahassee, FL 32308

If to Manufacturer:

[Company name]
Contact Name
Title
Address
City/State/Zip

5.9. Amendment. Any subsequent amendment or modification of this Agreement shall be in writing and signed by the parties or signed by the party against whom enforcement of such amendment or modification is sought.

5.10. Waiver. The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.

5.11. Choice of Law. This Agreement shall be governed by the law of Florida without regard to Florida's rules and regulations pertaining to conflicts of laws.

5.12. Effect of Future Laws. In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform under this Agreement; (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable to this Agreement; or (c) have the effect

of requiring the net prices or State Supplemental Rebates or other terms of this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiations with the other in order to seek agreement on reasonable terms for maintaining the intent of this Agreement with the effect of such enactment, promulgation, etc.; agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Products, effective immediately.

- 5.13. Compliance with Laws. In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.
- 5.14. Severability. If any provision of this Agreement is held to be illegal or unenforceable in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative and the remainder of this Agreement shall remain binding on the parties.
- 5.15. Entire Agreement. This Agreement represents the entire understanding of the parties as it pertains to the subject matter contained herein, and supersedes all previous agreements relative to the subject matter. This Agreement may not be amended or modified without the mutual written consent of the parties.
- 5.16. Force Majeure. Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war civil commotion, destruction of production facilities and materials, fire, earthquake, or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.
- 5.17. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon each party, its respective successors and permitted assigns.

Florida Agency for Health Care Administration

BY: _____

Title: _____

Date: _____

[Manufacturer Legal Name]

BY: _____

Title: _____

Date: _____

**ATTACHMENT A
COVERED PHARMACEUTICALS**

The pharmaceuticals to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package	Package WAC	Unit WAC
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ATTACHMENT B SAMPLE INVOICE FORM

STATE OF FLORIDA
STATE MEDICAID AGENCY

PAGE: 1 OF 1

FLORIDA MEDICAID SUPPLEMENTAL DRUG REBATE REQUEST

MANUFACTURER: [REDACTED]

STATE CODE: FL

REQUEST #: P-[REDACTED]

PERIOD COVERED: 07/01/2002 THROUGH 09/30/2002

NDC NUMBER	DRUG NAME	REBATE AMT. PER UNIT	TOTAL UNITS REIMB.	TOTAL REBATE AMT. REQUESTED	NO. OF SCRIPTS	TOTAL REIMB. AMOUNT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		TOTALS:	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

* PLEASE REMIT THIS AMOUNT TO THE AGENCY FOR HEALTH CARE ADMINISTRATION

NOTE:
NDCR = LABELER CODE (5)
PRODUCT CODE (4)
PKG. SIZE CODE (2)

ADDRESS: AGENCY FOR HEALTH CARE ADMINISTRATION
FINANCE AND ACCOUNTING / SUPPLEMENTAL DRUG REBATE
P. O. BOX 13529
TALLAHASSEE, FL 32317-3629
ATTN: MS JEAN LONBARDI

LABELER: [REDACTED]

**ATTACHMENT C
REBATE FORMULA**

Drug Name	NDC (11 digit required)	Discount Formula